

E.D. No. 76-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NEW MILFORD,

Public Employer,

- and -

Docket No. RO-76-123

PUBLIC WORKS EMPLOYEES
BENEVOLENT ASSOCIATION,

Petitioner.

SYNOPSIS

Based upon an administrative investigation and stipulated facts, and in the absence of substantial and material disputed factual issues, the Executive Director directs a representation election in a municipal blue-collar unit. The petition sought a unit of Department of Public Works employees, but the Executive Director finds the most appropriate unit to include two additional blue-collar employees employed as custodial personnel at the municipal building. The public employer urged the direction of an election in the DPW unit, arguing that its consent to the petitioned for unit precludes the Commission from fashioning the most appropriate unit, because there is no "dispute" pursuant to N.J.S.A. 34:13A-5.3. The Executive Director rules that there is such a dispute in this case and that his obligation is to determine the most appropriate unit on the facts in this case.

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Appearances:

For the Public Employer, Mr. Mario R. La Barbera, Esq.

For the Petitioner, Osterweil and LeBeau, Esqs.
(Alfred G. Osterweil, of Counsel)

DECISION AND DIRECTION OF ELECTION

On April 2, 1976, a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission by the Public Works Employees Benevolent Association (the "Association"), Docket No. RO-76-123. The Association seeks a unit of all employees of the Department of Public Works employed by the Borough of New Milford (the "Borough"), but excluding the Superintendent of Public Works. The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the petition in order to determine the facts. All parties have been advised of their obligation under Rule Section 19:11-1.12, and have been afforded an opportunity thereunder, to present documentary and other evidence, as well as statements of position, relating to the

petition. On the basis of the administrative investigation herein, as well as certain stipulations of fact entered into by the parties, the undersigned finds and determines as follows:

(1) The Borough of New Milford is a Public Employer, the employer of the employees in question, and is subject to the provisions of the New Jersey Employer-Employee Relations Act, as amended.

(2) The Public Works Employees Benevolent Association is an Employee Representative within the meaning of the Act and is subject to its provisions.

(3) The Association requests recognition from the Borough and the Borough has declined to grant recognition. Accordingly, there is a question concerning the representation of public employees and the matter is appropriately before the undersigned for determination.

(4) The Borough stated its position with regard to the above-captioned matter in a letter received on April 19, 1976, and signed by Councilman Frank McCue. In this letter, Councilman McCue stated that the Public Works Department was a Committee assigned to his jurisdiction and that he personally had no objection to a secret ballot election to be conducted in the proposed unit. An alphabetical list of the employees in the proposed unit together with their job qualifications and a certification of the posting of the usual notices were also received by the Commission.

Following receipt of the Borough's letter, described above, the staff member assigned to this matter had a series of telephonic conversations with the parties. These conversations

revealed that the petitioned for employees constituted all the blue collar employees employed by the Borough with the exception of two (2) presently unrepresented blue collar employees who serve as custodial personnel at the Borough Municipal Building.

In view of this information, the staff member assigned informed the parties of the Commission's policy favoring the establishment of broad-based units, as opposed to the creation of narrow units organized along departmental or occupational lines. The parties were referred to various Commission and Court Decisions, including In re State of New Jersey and Professional Assn. of N. J. Department of Education, 64 N.J. 231 (1974), Aff'g P.E.R.C. No. 68 (May 23, 1972) (the "State Professional Case"). The staff member suggested that any agreement for a consent election which might be executed as a result of the instant petition should describe the unit as follows: All blue-collar employees employed by the Borough, but excluding the normal statutory exclusions. The parties took this suggestion under advisement, withholding a formal position until a later date.

The investigatory process continued and an informal conference with the parties was held on May 11, 1976. At that time, the parties entered into a lengthy stipulation of facts, stating their respective positions. The Borough contends that the employees set forth in the petition constitute an appropriate unit for election and that the custodial employees at the Borough Municipal Building do not share a community of interest with the Public Works employees, advancing in support of this contention the fact that the custodians are engaged primarily in inside duties while

the Public Works employees are essentially outdoor workers. The Association also contends that the petition, as filed, represents the appropriate unit for election. The Stipulation concludes with a joint request that the Executive Director "determine the most appropriate unit for collective negotiations" without resort to the Commission's hearing procedures, and that he "order an election pursuant to that determination."

(5) On May 25, 1976, the undersigned advised the parties in writing that on the basis of the investigation to date, it appeared that the petition was timely and that a valid question concerning the representation of public employees existed. With regard to the question of the composition of the proposed unit, the undersigned stated that in disputed cases it is the Commission's duty to determine the unit it deems the most appropriate for the purposes of collective negotiations. It was noted that the parties stipulated that the custodians are public employees within the meaning of the Act and that they and the Public Works Department employees constitute all the blue-collar employees employed by the Borough. It was further noted that the formation of a unit comprised of something less than all blue-collar employees, on the facts in this matter, may lead to undue fragmentation and an unnecessary multiplicity of negotiating units or to a situation in which the two remaining blue-collar employees are denied inclusion in any unit. The undersigned concluded by stating, in the absence of substantial and material disputed factual issues, a decision and direction of election would issue regarding a unit comprised

of all blue-collar employees employed by the Borough of New Milford, with the standard exclusions. The parties were afforded seven days to comply with their obligation pursuant to Rule Section 19:11-1.12(a) to proffer any supplementary evidence or statements of position relevant to the instant petition.

On May 27, 1976, the Borough, through its Attorney, submitted a statement of position in response to the undersigned's letter described above. Without disputing the Executive Director's authority to determine the most appropriate unit in disputed cases, the Borough urges that the undersigned direct an election in the unit petitioned for by the Association and consented to by the Borough, contending that the consent of the Borough removes the petition from the disputed category in which the Commission is empowered to fashion the most appropriate unit.^{1/} The Borough alleges that if the employees not presently the subject of the petition should independently seek collective negotiations, then and only then may the Commission determine the appropriate negotiating unit.

In support of its contention, the Borough cites the State Professional Case at p. 253:

Clearly the ultimate organization of all employees who desire collective negotiations with the State is a logical objective of the public policy underlying the statute. (Emphasis added by the Borough)

^{1/} N.J.S.A. 34:13A-5.3 provides in pertinent part:
"...The negotiating unit shall be defined with due regard to the community of interest among the employees concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute."

The Borough reiterates that in the absence of a "dispute" between itself and the Association with regard to the proposed unit's composition, the election should be confined to those employees who have requested it and not broadened to include others.

Petitioner has not filed a response to the undersigned's letter of May 25, 1976, and, therefore, presumably has no objection to broadening the unit description to include all blue-collar employees employed by the Borough.

(6) The undersigned has considered the entire record, the stipulations, and the submissions of the parties, and finds that the disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues are in dispute which may more appropriately be resolved after a hearing.

The undersigned has carefully considered the Borough's arguments. Treating first the implicit question of the Commission's jurisdiction under the Act to determine the proposed unit's composition, it is clear that the meaning of the word "dispute" as used in N.J.S.A. 34:13A-5.3 must not be given an unduly narrow interpretation. Where, as here, a public employer has declined to recognize the claim of majority status by a public employee representative, and said representative has filed with the Commission a Petition for Certification of Public Employee Representative, there exists a "dispute" within the meaning of N.J.S.A. 34:13A-5.3.

The Commission's elections procedures and its duty to determine in each instance the appropriate unit for collective

negotiations are not separate functions. They must be viewed as the component parts of an integral whole. The duality of this function is clearly expressed in N.J.S.A. 34:13A-6(d), which provides in pertinent part:

The Commission...is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiations...

Should the Borough's interpretation prevail, the Commission might be placed in a position of being required to certify the result of an election conducted in a unit which may be in contravention of the purposes and provisions of the Act.

The ultimate decision of the Supreme Court in the State Professional Case with regard to the Commission's duty to determine unit composition is dispositive of the Borough's contention that because all the blue-collar employees it presently employs have not requested to be included in a negotiating unit, the Commission should limit its determination to the appropriateness of the proposed unit:

Since, as already indicated, more than one proposed unit may well have attributes of appropriateness, and it is essential for the functioning of the statutory scheme that a designation of a single unit be arrived at in a contested case, as here, the Commission had no choice but to determine the unit it deemed best and accordingly to designate either a unit proposed by one of the parties or to specify one of its own conception, as guided by the evidence, its expertise and the statutory criteria. /Emphasis added/2/

2/ 64 N.J. 231 at p. 257; See also In re Township of Dover, E. D. No. 63 (1975).

Thus, the Commission must, in disputed cases, as here, determine the unit it deems the most appropriate for the purposes of collective negotiations. In making this determination, the Commission is to be guided by the statutory mandate to foster stable, efficient and harmonious labor relations in the public sector.^{3/} Consideration is to be given to the community of interest among the employees concerned as well as the desires of the employees but exclusive reliance on these factors would contravene the purposes of the Act.^{4/} In pursuit of the Act's mandate, the Commission has adopted a clear policy of finding broad-based units to be appropriate, rejecting the claims of particular occupations or departmental groupings for separate status.^{5/}

(7) Accordingly, based upon the above,^{6/} and in the absence of any substantial and material disputed factual issues, the undersigned finds that the most appropriate unit for collective negotiations is: All blue-collar employees employed by the Borough of New Milford but excluding the Superintendent of Public Works,

^{3/} N.J.S.A. 34:13A-2.

^{4/} 64 N.J. 231 at p. 257 and p. 253, respectively.

^{5/} See, for example, In re State of New Jersey P.E.R.C. No. 68; In re South Plainfield Board of Education P.E.R.C. No. 46 (1970); In re Bergen County Board of Chosen Freeholders P.E.R.C. No. 69 (1972); In re Union County Board of Chosen Freeholders E.D. No. 49 (1974).

^{6/} This determination is not to be construed as barring a different determination in future cases under different circumstances. See 64 N.J. 231 (1974), footnote at p. 253 "...In any event, nothing in our holding or in the decision of P.E.R.C. precludes a later determination under circumstances then existing, authorizing units of less than the total body of professional employees."

See also In re Board of Education, Rancocas Valley Regional High School, E.D. No. 76-39, 2 NJPER ____ (1976) at p ____.

supervisors, professional and craft employees, confidential employees, clerical employees, and policemen within the meaning of the Act.

(8) The undersigned directs that an election be conducted among the employees described in Section 7.^{7/} The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to Rule Section 19:11-2.7, the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to

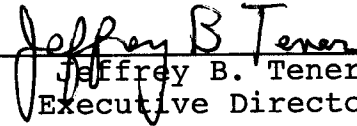
^{7/} The undersigned notes that the determination to broaden the petitioned for unit to include all blue-collar workers employed by the Borough does not adversely affect the adequacy of the showing of interest submitted by the Association in support of its petition.

the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by the Public Works Employees Benevolent Association.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
June 15, 1976